1

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 153

WILLIAM W. WHITE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 19, 1914.

(24,222)

(24,222)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 485.

WILLIAM W. WHITE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1914.

1 *I. Petition. Filed December* 11, 1913.

In the Court of Claims.

No. 32725.

WILLIAM W. WHITE
v.
THE UNITED STATES.

Petition.

Filed December 11th, 1913.

The petition of the above-named William W. White respectfully represents:—

I.

That he is an officer in the United States Navy, being a Commander on the retired list, and that he has been continuously an officer in said Navy from the time of his graduation from the United States Naval Academy in June, 1881. That he was an officer on the active list of said Navy until the 30th day of June, 1905, on which date he was transferred to the retired list, on his own request, according to law, with the rank of three-fourths the sea pay of a
2 Commander, having been at the time of such transfer a Lieutenant Commander, but notwithstanding said transfer, but in accordance with law, he was continued, without intermission, in active service in said Navy until the 31st day of October, 1911, on which date he was detached from duty and ordered home.

II.

That by virtue of law in force from the said 30th day of June, 1905 until the said 31st day of October, 1911, he received for his active services in the Navy during that period the pay and allowance of a Lieutenant-Commander on the active list (Act of June 7, 1900, 31 Stat. L. p. 705).

III.

That on the 13th day of April, 1911, in pursuance of authority vested in the President of the United States by an Act of Congress approved March 4, 1911, he was commissioned by the then President of the United States "a Commander in the Navy on the Retired List from the 30th day of June, 1905, in the service of the United States."

IV.

That by a provision in the Act of Congress approved March 4, 1913 (Naval Appropriation Act) it was enacted—

"That all officers of the Navy who, since the 3rd day of March,

1899, have been advanced, or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."

V.

That he is now entitled, by reason of said last mentioned enactment to receive from the defendant for his services during
3 the period beginning on the 30th day of June, 1905, and ending on the 31st day of October, 1911, in addition to the aggregate amount he has already received for such services, a sum equal to the difference between that aggregate amount and the aggregate pay and allowances of a Commander in the Navy for that period, that is to say, for the

difference between the pay of a Lieutenant-Commander in the Navy and that of a Commander from July 1st, 1905, to June 29, 1906, (both dates inclusive) at the rate of $425 per annum	$423.84
difference from June 30, 1906, to October 31, 1911, (both dates inclusive) at the rate of $500 per annum.	$2,688.03
difference in commutation for quarters from July 1, 1905, to October 31, 1911, (one extra room) at $12 per month	912.00
Amounting to	$4,003.87

VI.

That a claim was presented to the Auditor for the Navy Department and disallowed, for the reason that the Act of March 4, 1913, granting pay to officers from the dates as stated in their commissions, has reference only to officers advanced on the active list of the Navy.

VII.

That no assignment or transfer of this claim or any part thereof or interest therein has been made, and that he is the sole owner thereof; that he is justly entitled to the amount herein claimed from the United States after allowing all just credits and off-sets. That he has always been loyal to the Government of the United States and is a citizen thereof.

4 Wherefore the premises considered, your petitioner prays judgment against the United States for the sum of $4,003.87.

WILLIAM W. WHITE.

DISTRICT OF COLUMBIA,
City of Washington, ss:

William W. White, being first duly sworn, upon his oath says that he is the claimant in the above Petition, and that the allega-

tions set forth therein are true to the best of his knowledge and belief.

WILLIAM W. WHITE.

LYON & LYON,
Attorneys of Record.
E. S. McCALMONT,
Of Counsel.

Subscribed and sworn to before me, a Notary Public, this 11th day of December, A. D. 1913.

[SEAL.] GEORGE W. SMITH,
Notary Public.

5 *II. Traverse. Filed December* 12, 1913.

In the Court of Claims of the United States, December Term, A. D. 1913-1914.

No. 32725.

WILLIAM W. WHITE
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

HUSTON THOMPSON,
Assistant Attorney General.
J. R. W.

6 *III. Demurrer. Filed March* 28, 1914.

The defendants, by their Attorney General, demur to the petition in the above entitled cause, on the ground that it does not state facts sufficient to constitute a cause of action.

HUSTON THOMPSON,
Assistant Attorney General.

LOUIS G. BISSELL,
Attorney for the United States.

7 *IV. Argument and Submission of Demurrer.*

On April 27, 1914 the demurrer in this case came on to be heard, and it was submitted by Mr. Louis G. Bissell, for the demurrer, and by Messrs. Lyon & Lyon, in opposition, on the argument in the case of John D. Ford, No. 32,687, a case involving the same question.

8 *V. Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 4th day of May, 1914, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendant, and do order, adjudge and decree, that the demurrer of the defendant be sustained, and that the petition of the claimant, William W. White, be, and the same is hereby dismissed.

BY THE COURT.

9 *VI. Application of Claimant for, and the Allowance of, an Appeal.*

Now comes the claimant in the above entitled cause, by Lyon & Lyon, his attorneys of record, and shows that the amount in controversy exceeds three thousand dollars, said amount being four thousand three dollars and eighty-seven cents.

And the claimant prays that this Court allow an appeal to the Supreme Court of the United States from the judgment rendered herein May 4, 1914, sustaining a demurrer and dismissing the suit.

LYON & LYON,
Attorneys of Record.

Filed May 11, 1914.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

May 11, 1914.

10 Court of Claims.

No. 32725.

WILLIAM W. WHITE
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the judgment of the Court sustaining the demurrer of the defendant and dismissing the petition of claimant; of the application of the claimant for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington City, this 16" day of May, A. D., 1914.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 24,222. Court of Claims. Term No. 485. William W. White, appellant, vs. The United States. Filed May 19, 1914. File No. 24,222.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 153.

WILLIAM W. WHITE, Appellant,

vs.

THE UNITED STATES, Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT, WILLIAM W. WHITE.

EDWARD S. McCALMONT,
SIMON LYON,
R. B. H. LYON,
Attorneys for Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

CASES CITED.

STATUTES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 153.

WILLIAM W. WHITE, Appellant,

vs.

THE UNITED STATES, Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT, WILLIAM W. WHITE.

STATEMENT OF THE CASE.

The appellant is an officer in the United States Navy, on the retired list. On June 30, 1905, he was a Lieutenant Commander on the active list, and on that day was transferred to the retired list (his age being at that time 49

years), and advanced in rank by such transfer to that of a Commander, under Section 8, of the Act of Congress approved March 3, 1899 (30 Stat. L., 1006).

On the same day, he was ordered to active shore duty, under authority vested in the Secretary of the Navy by the Act of Congress approved June 7, 1900 (31 Stat. L. 703), which reads as follows:

> "During a period of twelve years from the passage of this act any naval officer on the retired list may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed shall receive the pay and allowances of an officer of the active list of the grade from which he was retired."

The active duty to which appellant was ordered was a continuation without break of duty in which he was engaged when retired. He was continued without intermission on shore duty for six years and four months, until October 31, 1911, when he was detached from duty, and was ordered home. During that time he received the pay and allowances of a Lieutenant-Commander.

On March 4, 1911, the following Act of Congress was passed:

> "That commissioned officers of the Army, Navy, and Marine Corps on the retired list whose rank has been or shall hereafter be advanced by operation of or in accordance with law shall be entitled to and shall receive commissions in accordance with such advanced rank." (36 Stat. L., 1354.)

On April 13, 1911, the appellant was commissioned a Commander in the Navy on the retired list, from the 30th day of June, 1905, in the service of the United States.

On March 4, 1913, the following Act of Congress was passed:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions." (37 Stat. L., 891.)

The appellant applied for the allowance of the pay and allowances of a Commander on shore duty from June 30, 1905, to October 31, 1911, less the pay and alowances of a Lieutenant-Commander on shore duty for that time, which latter amount he received. His claim was rejected by the Accounting Officers of the Treasury, whereupon he began suit for the amount claimed, and this is an appeal from the judgment dismissing on demurrer his petition, which stated the facts substantially as above recited.

Assignment of Errors.

The appellant hereby assigns the following errors in the proceedings and judgment of the Court of Claims:

1st. The Court erred in finding for the appellee, and in sustaining the demurrer.

2nd. The said Court erred in not finding that the appellant had a valid claim under the Act of Congress approved March 4, 1913, (37 Stat. L. 891), for the difference between the active pay and allowances of a Commander and those of a Lieutenant-Commander in the United States Navy for the period from June 30, 1905, to October 31, 1911.

3rd. The said Court erred in dismissing the petition of appellant.

ARGUMENT.

Appellant's Contention.

The appellant's position is that he is clearly, by the letter of the law, included in the general description "All officers of the Navy" as used in the Act of Congress approved March 4, 1913, hereinbefore cited. He was an officer who had been advanced in rank, pursuant to law, since the third day of March, 1899, that is to say, on June 30, 1905, and having been in active service *in invitum* from that date until October 31, 1911, and having received during that time only "the pay and allowances" of a Lieutenant-Commander, he became entitled by the terms of the aforesaid Act to the difference between the pay and allowances he had received, and the pay and allowances of a Commander—the grade to which he had been advanced.

The objection of the Government was that if appellant's contention is correct, then all officers of the Navy on the retired list, advanced since March 3, 1899, are entitled to the pay and allowances of their advanced grade. Officers on the retired list as such, do not receive pay *and allowances*. Pay *and allowances* invariably appertain to active service, and active service whether the officer is on the active or retired list.

"Shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commission," clearly includes all officers in *active* service, and *only* officers in active service. The Government in its argument below failed to distinguish between the terms "active *list*" and "active *service*." All officers on the active list are in active service, but so also are all officers on the retired list who are receiving pay and allowances, and they do not receive pay *and allowances* unless in active service.

The appellant's petition is, further, that he and officers on the retired list similarly situated, are not only within

the letter of the law, but that there is nothing in the nature or character of their claims to suggest that adherence to the letter of the law, as they read it, would result in unreasonable and much less absurd consequences.

On the other hand, appellant contends that his and their standing was such when the Act of Congress approved March 4, 1913, aforesaid was passed, as to invite and justify action by Congress in their interest, as officers discriminated against to their injury by the operation of the Act of Congress approved June 7, 1900 (31 Stat. L. 703).

The appellant went on the retired list June 30, 1905. He was, however, kept in active service, without increase of pay and allowances, continuously for a period of six years and four months. In the meantime, what happened? An inspection of the Naval Register, covering the year of 1905 and following years, discloses that officer Emil Theiss took the number in the active list vacated by the appellant; that Theiss became a Commander August 28, 1907, and a Captain March 4, 1911. A calculation reveals that had the appellant continued on the active list and been regularly advanced, he would have received for his services from July 1, 1905, to October 31, 1911, in addition to what he did receive as a retired officer on active duty, the sum of $2,957.00. In other words, this appellant apparently suffered a money injury to the extent of about three thousand dollars, and in addition, he was left in rank, a grade below his contemporaries, and in pay, two grades below that which he would be receiving were he on the retired list of the date when his active duties ceased, October 31, 1911.

The word "apparently" above, is used to meet the criticism that the appellant might not have met the requirements for promotion. As he was retained in active service, the presumption would seem to be the other way. However, we are not attempting to show the result definitely, but only

to the extent of fixing conditions as of the time when the Act of Congress approved March 4, 1913, was passed.

We ask indulgence for endeavoring to throw a little more light on the conditions following and flowing from the operation of the Act of Congress approved June 7, 1900, hereinbefore cited.

Section 8 of the Personnel Act was an invitation to Lieutenant-Commanders, Commanders and Captains to offer themselves for retirement in order that there might be a chance for a freer upward movement from congested lower grades. It stands to reason that an officer would not offer himself for retirement without a motive, and it is too altruistic to suppose that the motive would be other than one of material betterment. It is quite clear that when the Act of Congress approved March 3, 1899, aforesaid, was passed, there was no prospective intention on the part of Congress of changing the historical policy that required the service of retired officers only in time of war.

When the Act of Congress approved June 7, 1900, was passed, the Act of March 3, 1899, was untouched so far as its voluntary retirement provisions were concerned, and it must be presumed that the intention was to continue the invitation to voluntary retirement as provided therein. The invitation, however, would necessarily prove barren of acceptance if the invited were to believe in advance that acceptance would mean their continuance in active service with stationary compensation and no further advancement in grade beyond the advancement to a higher grade on the retired list. If Congress intended that the discretionary power it was vesting in the Secretary of the Navy by the aforesaid Act of June 7, 1900, would be used to continue the officers going on the retired list under the Act of March 3, 1899, on active duty indefinitely, it is reasonable to suppose that it would have repealed the voluntary retirement pro-

vision of the Act of March 3, 1899, as otherwise we must assume that Congress had design in advance of leaving open an invitation, acceptance of which would be based on a confidence that would be sure of a disappointment. It may be affirmed then that Congress did not anticipate that the Secretary of the Navy would use the discretionary power vested in him by the Act of June 7, 1900, aforesaid, to the injury of officers retiring voluntarily, or rather that he would not use it in a manner to impair the confidence they would necessarily be presumed to entertain in submitting themselves for retirement. The Secretary, on the other hand, naturally inferred that the power was to be exercised, and that it was his duty to exercise it, wholly in the interest of the Government without regard to its effect upon the careers of the officers concerned. If the exercise of the discretion did in fact seriously and injuriously affect the officers concerned, and we think that can not be doubted, then, looking backward, which must be done in consideration a statute having for its purpose the giving of additional pay for past services, we find Congress in 1913 confronting a situation which appealed fairly to a sense of justice for relief, and this being the case, we find Congress passing a law, which in plain terms, appears to intend to give the relief the conditions demanded. In this situation we submit that the spirit and intention of the aforesaid Act of Congress approved March 4, 1913, is crystalized in its language, and should be enforced as written, in favor of *all* officers of the Navy coming within its terms.

Supporting the foregoing contention of appellant, are the following authorities:

> "It is a well-settled rule that so long as the language used is unambiguous, a departure from the natural meaning is not justified by any consideration of its

consequence, or public policy, and it is the plain duty of the Court to give it force and effect."

Lake County Commissioners v. Rollins (130 U. S., 662);
United States v. Goldenberg (168 U. S. 95);
Johnson v. Southern Pacific Co. (196 U. S. 15).

* * * * * * * * *

"* * * it is fairly and justly presumable that the legislature which was unrestrained in its authority over the subject, has so shaped the law as without ambiguity or doubt, to bring within it everything that was meant should be embraced."

Cooley on Taxation 3d Edition, p. 464.

"The statute must be held to mean what its language imports; when it is clear and imperative, reasoning *ab inconvenienti* is of no avail, and there is no room for construction."

Boudinet v. U. S. (11 Wall., 616);
Lewis v. United States (92 U. S., p. 621);
Lake County Commissioners v. Rollins (130 U. S., 662).

"Construction and interpretation have no function where the terms of the Statute are plain and certain, and its meaning clear."

Colorado & N. W. R. R. Co. v. United States (209 U. S., 544).

* * * * * * * * *

"The statute is a remedial one and should be liberally interpreted."

Silver v. Ladd (7 Wall., 219);
Johnson v. So. Pacific Co. (196 U. S., 15);
Merchants National Bank of Baltimore v. United States (42 C. C., 6);
1 Kent Comm. 465.

"In expounding remedial laws, the Courts will extend the remedy as far as the words will admit."

Hayden's Case (3 Coke 7);
Pierce v. Hopper (1 Strange 253).

"A remedial statute ought not to be construed so as to defeat in part the very purpose of its enactment."

Beley v. Naphtaly (169 U. S., 353);
Jones v. Guaranty, etc., Co. (101 U. S., 626);
Twenty Per Cent Cases (13 Wall., 575);
Ross v. Doe (1 Pet., 667).

We call the Court's special attention to the cases of United States v. Hvoslef (237 U. S., p. 1) and Thames-Mersey Marine Insurance Co., Ltd., v. United States (237 U. S., p. 19), in which it decided the following:

"Although the pendency of one class of claims may have induced the passage of an Act of Congress providing for their adjustment, the Act may embrace other claims if its terms are sufficiently wide so to do."

* * * * * * * * *

Reply to Appellee's Contention.

In its brief below, the Government presented in different forms, a line of reasoning, having in view a refutation of our proposition that by the language of the Act of Congress approved March 4, 1913, aforesaid, the appellant and others similarly situated (that is to say retired officers who were

cast *in invitum* for active service under the aforesaid Act of June 7, 1900) are included among the officers of the Navy it designed to aid. Anticipating a reiteration of the reasoning, we submit that it is so unconvincing as to warrant the supposition that it has no other purpose than that of *creating* an ambiguity in the language of the aforesaid Act of March 4, 1913, in order that the records of Congress may be invoked and a limitation of the general language of this Act imposed to fit the limited purposes disclosed by such records—to substitute the limited purpose of a portion of the legislative body for the general purposes expressed by the whole body. (See 19 Comp. Dec., 844.)

Assuming that there is no ambiguity in the language of the aforesaid Act of March 4, 1913, and that its purpose as disclosed by that language alone sustains the contention of the appellant, can the Court, as the rules of interpretation stand, give a limited meaning to the language on finding a limited purpose attached to it in the report of a Committee of one of the branches of the Legislature?

> "Where a law is plain and unambiguous, whether expressed in general or limited terms, there is no room left for construction, and a resort to extrinsic facts is not permitted to ascertain its meaning."
>
> Bartlett v. Morris (9 Porter, 266);
> United States v. Musgrove (160 Fed. Rep. 700);
> Lake County Commissioners v. Rollins (131 U. S., 671).

But it is said that this is no longer a rule of construction, and the cases of the Church of the Holy Trinity v. The United States (143 U. S., 463) and Binns v. United States (194 U. S. 486) are cited in support of the statement. We submit to the Court that neither of these cases infringes the rule. Mr. Justice Blackstone in his Commentaries (Intro-

duction, Sec. 2, p. 60) having under discussion the method of interpreting the will of the legislator, says that where words have no meaning or bear an absurd signification if literally understood, we must deviate from the received sense of them, that is, we must attend to the effects and consequences, and if the effects and consequences appear absurd, the literal scope of the language is to be limited. He illustrates the rule by a case mentioned by Puffendorf under the Bolognian Law which enacted "that whoever drew blood in the streets should be punished with the utmost severity," in which it was held "after long debate" that it did not extend to a surgeon who opened the vein of a person that fell down in the street with a fit.

Rightly considered, the Holy Trinity Church case ranges itself with the case mentioned by Puffendorf. It is plain from the opinion in the Church case that although the conclusion is the result of "long debate" yet that the consequence of a literal interpretation of the Act in that case under discussion, as invoked by the Government, must have appeared to the Court as plainly and obviously contrary to the attitude of the common mind of the nation. The resort to the Committee records was, therefore, to determine whether the Court's conception of the common thought and attitude of the nation found any conflicting conception among those who had considered the subject preliminary to the enactment of the Statute.

Nor did the Court go to the records of either branch of Congress for an interpretation of the Act under review in the Binns case. The only question in that case that involved interpretation was whether a provision in the Penal Code of Alaska, which required that license fees to be collected in Alaska thereunder should be paid into the Treasury of the United States, was void as in conflict with the provision of the Constitution withholding from Congress the power to

impose excise taxes except uniformly throughout the United States. The question, as appears by the opinion, received a negative answer, because the taxes were not imposed or used for the expense of the general government, upon reasoning not dependent in any way upon anything that occurred in either branch of Congress or before its Committees in connection with the consideration of the legislation.

In the opinion of Justice Brewer in the foregoing case, reference was made to a response on the floor of the Senate by the Chairman of the Committee on Territories, as tending to show that the license charges were being imposed solely for the purpose of revenue to help defray Alaskan expenses, but only *after* he had already expressed the opinion of the Court drawn from other considerations, that it was obvious that the purpose of the taxes was to raise revenue in Alaska for Alaska because the taxes were authorized in statutes dealing solely with Alaska and there was no provision for a direct property tax to be collected in Alaska for the general expenses of the Alaskan Government, and because the entire moneys collected from the license taxes and otherwise from Alaska were inadequate for the expenses of that Territory.

A further contention of the Government was that the appellant's position requires, if deemed sound, repeal by implication of an Act of Congress passed August 22, 1912 (37 Stat. L., 328) which reads:

> "Hereafter any naval officer on the retired list may, with his consent, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the same rank: *Provided*, That no such retired officer so employed on active duty shall receive, in time of peace, any greater pay and al-

lowances than the pay and allowances which are now or may hereafter be provided by law for a lieutenant, senior grade, on the active list of like length of service: *And provided further*, That any such officer whose retired pay exceeds the highest pay and allowances of the grade of lieutenant, senior grade, shall, while so employed in time of peace, receive his retired pay only, in lieu of all other pay and allowances."

The appellant's active service while on the retired list had no connection whatever with the Act of August 22, 1912. The policy of that Act, be it observed, is in harmony with the position of the appellant that he and those in a like situation, were discriminated against by the operation of the Act of June 7, 1900, for, the said Act of June 7, 1900, having expired by limitation, the Act of August 22, 1912, reversed its exceptional, temporary, experimental policy, first, by making service optional and not re-enacting compulsory service, and, secondly, by providing, to a large extent, that pay and allowances for active services should be of the grade of the retired officer.

Were this appellant applying for pay and allowances of his grade by reason of active services under the Act of August 22, 1912, and recognition of his claim would involve a repeal by inplication, of the Act of August 22, 1912, *pro tanta*, we could concede the force of the Government's argument. To hold that the appellant and those in a similar situation under the operation of the Act of June 7, 1900, hereinbefore cited, are within the benefit of the Act of March 4, 1913, hereinbefore cited, does not preclude the Government from contending if a case under the aforesaid Act of August 22, 1912, should arise, that it is not within the benefit of the Act of March 4, 1913, hereinbefore cited. The Act of March 4, 1913, can be carried out in every part as including appellant within the scope of its general provi-

sions, and as excluding, if the occasion should arise, retired officers performing active service under the operation of the provisions of the Act of Congress approved August 22, 1912. As to these latter, the contention that the Act of March 4, 1913, can not be deemed to repeal by implication, the Act of August 22, 1912, would be sound. As to appellant, and those in a similar situation, it is not sound, for the Act of August 22, 1912, is in no way involved in their contention. The correctness of the appellants' contention as to the Act of March 4, 1913, does not by implication repeal the Act of August 22, 1912, or any part of it. It would continue to be the law as to pay and allowances for all active service on the part of retired officers under its operative provisions.

It must, therefore, be concluded that the Act of March 4, 1913, construed according to its plain terms and words, which would be in accordance with the well settled principles of law as heretofore decided by this Court, would give this appellant the difference in pay and allowances between that of a Lieutenant-Commander and Commander for the period from June 30, 1905, to October 31, 1911, which is justified by the plain reading of the language of the aforesaid Statute bearing on this case, as the Act of March 4, 1913, reads:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."

The appellant, therefore, prays that the judgment of the Court of Claims, sustaining the demurrer and dismissing the petition, be reversed, so as to entitle this appellant to the aforesaid difference of pay for the active service ren-

dered by him covering the period from June 30, 1905, to October 31, 1911, and that the case be remanded with instructions to enter judgment for the appellant after ascertainment by the Treasury Department of the exact amount due for such services.

Respectfully submitted,

EDWARD S. MCCALMONT,
SIMON LYON,
R. B. H. LYON,
Attorneys for Appellant.

APPENDIX.

(Acts of Congress Cited by Appellant.)

Act of Congress approved March 3, 1899, Section 8 (30 Stat. L., 1006):

> "Section 8. That officers of the line in the grades of captain, commander, and lieutenant-commander may, by official application to the Secretary of the Navy, have their names placed on a list which shall be known as the list of 'Applicants for voluntary retirement,' and when at the end of any fiscal year the average vacancies for the fiscal years subsequent to the passage of this Act above the grade of commander have been less than thirteen, above the grade of lieutenant-commander less than twenty, above the grade of lieutenant less than twenty-nine, and above the grade of lieutenant (junior grade) less than forty, the President may, in the order of the applicants, place a sufficient number on the retired list with the rank and three-fourths the sea pay of the next higher grade, as now existing, including the grade of commodore, to cause the aforesaid vacancies for the fiscal year then being considered."

Act of Congress approved June 7, 1900 (31 Stat. L., 703):

> "During a period of twelve years from the passage of this act any naval officer on the retired list may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed shall receive the pay and allowances of an officer of the active list of the grade from which he was retired."

Act of Congress approved March 4, 1911 (36 Stat. L., 1354):

"That commissioned officers of the Army, Navy, and Marine Corps on the retired list whose rank has been or shall hereafter be advanced by operation of or in accordance with law shall be entitled to and shall receive commissions in accordance with such advanced rank."

Act of Congress approved August 22, 1912, (37 Stat., 328, 329):

"Hereafter any naval officer on the retired list may, with his consent, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the same rank: *Provided*, That no such retired officer so employed on active duty shall receive, in time of peace, any greater pay and allowances than the pay and allowances which are now or may hereafter be provided by law for a lieutenant, senior grade, on the active list of like length of service: *And provided further*, That any such officer whose retired pay exceeds the highest pay and allowances of the grade of Lieutenant, senior grade, shall, while so employed in time of peace, receive his retired pay only, in lieu of all other pay and allowances."

Act of Congress approved March 4, 1913, (37 Stat. L., 891):

"That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law, shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."